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TRADE AND DEVELOPMENT BOARD
Special Committe on Preferences
Seventeenth session
Geneva, 14 May 1990
Agenda item 4
Sessional Committee

HARMONIZATION AND IMPROVEMENT OF THE RULES OF ORIGIN

Draft agreed Conclusions submitted by the Chairman of the Sessional Committee

The Sessional Committee of the Special Committee on Preferences at its seventeenth session.

1. Agreed that in order to respond to Conference Resolution 159, Section III, paragraph 18, a progressive and item by item examination of possible initiatives based upon the secretariat document TD/B/C.5/120 relating to improvements in existing rules of origin should be pursued by the Sessional Committee in its future deliberations;

2. Noted the adoption of the Harmonized Commodity Description and Coding System (HS) by all preference-giving countries;

3. Agreed that,

(i) Consideration should be given in the course of the next review to examining the current definitions of "substantial transformation" namely, the proces_s criterion and the percentage criterion;

(ii) Preference-giving countries, in the course of their review of their schemes, should examine both defintions in light of their experience over two decades and exchange views thereon during a future session of the Special Committee on Preferences.

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SPECIAL COMMITTEE ON PREFERENCES
Seventeenth session
Geneva, 14 May 1990
Sessional Committee

DRAFT REPORT OF THE SESSIONAL COMMITTEE OF THE SPECIAL COMMITTEE ON PREFERENCES

Rapporteur: Mr. Mieczyslàv Nogai (Poland)

CONTENTS

Chapter		Paragraphs
	Introduction	1 - 3
I.	Harmonization and improvement of the rules of origin (item 4)	4
	Statement of the Chairman	5
	Statement of Group D	6
	Statement of the Group of 77	7 - 11
	Statement of China	12 - 14
	Statement of Group B	15
	Statement of the EEC	16 - 17
	Action by the Sessional Committee	18 - 22

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INTRODUCTION

1. The Sessional Committee to deal with questions of the "Rules of Origin" was formally set up by the Special Committee on Preferences at its 158th plenary meeting on 18 May 1990. This action was taken in accordance with the recommendations of the Ad hoc Intergovernmental Working Group on the In-depth Study of the United Nations Intergovernmental Structure and Functions in the Economic and Social Fields.

2. At the Sessional Committee's 1st meeting on Monday, 14 May 1990, Mr. Sven LANGSTROM (Finland) was elected Chairman. At its resumed 1st meeting on 17 May 1990, it elected Mr. Mieczyslav NOGAI (Poland) as its Vice-Chairman-cum-Rapporteur.

3. The Sessional Committee held three meetings from 14 to 18 May 1990.

I. HARMONIZATION AND IMPROVEMENT OF THE RULES OF ORIGIN

(Agenda item 4)

4. For its consideration of this item, the Sessional Committee had before it the following documentation:

"Improvement in the rules of origin, including harmonization, identification and promotion of possible initiatives", report by the UNCTAD secretariat (TD/B/C.5/120 and Corr.1).

"Comprehensive review of the generalized system of preferences, including its implementation, maintenance, improvement and utilization", report by the UNCTAD secretariat (TD/B/C.5/130).

5. The Chairman recalled that the Sessional Committee had taken over the responsibilities of the Working Group on Rules of Origin. Fresh initiatives were now essential in order to achieve improvements. The increasing need for technical assistance illustrated the complexities of the rules of origin. It was important that the rules be neither too restrictive, in which case they would be an obstacle to trade, nor too liberal and thus encourage transit trade. A fresh approach was particularly important at a time when most donors were in the process of reviewing their schemes for the 1990s; constructive proposals were no doubt now being considered in capitals. The secretariat (in document TD/B/C.5/120) had proposed some innovative approaches relevant to the current needs. This could form the basis for discussions.

6. The spokesman for Group D (Hungary) said that in order to achieve the original objectives of the GSP, preference-giving countries had to adopt a single, harmonized set of rules of origin that would be simple to apply. This aim had been reiterated in various UNCTAD resolutions calling for further liberalization of the rules, bearing in mind the special needs of developing countries. Rules of origin were a central feature of the GSP. Preference-giving countries members of Group D had signed an agreement in 1980 on uniform rules for determining the origin of goods from developing countries. Based on the value-added criterion, these rules provided for full and global cumulation. Group D was nevertheless ready to examine any suggestions for the improvement of the rules of origin.

7. The spokesman for the Group of 77 (Algeria) emphasized the need to adopt significant, practical measures to improve the rules of origin which remained restrictive, complex and diverse despite their improvement and simplification in some schemes, as had been indicated in secretariat document TD/B/C.R/130.

The dichotomy between process and percentage criteria, in the definition of "substantial transformation", continued to prevent beneficiaries from taking full advantage of the different schemes. Such complications were especially serious for the least developed countries and others with limited resources. This situation had been described as a "stalemate" by the Working Group at its tenth session and did not seem to have changed in 1987 or indeed since, as some might say. Apart from a degree of harmonization achieved by preference-giving countries using the process criteria and by those of Eastern Europe using the percentage criteria, the rules had remained much the same as when the GSP was introduced, nearly 20 years ago, i.e. excessively restrictive, unduly complex and diverse. Hence, it was incumbent on the Committee to pursue purposeful discussions and to achieve a breakthrough by reaching agreement on positive and concrete improvement to the rules.

8. The ultimate objective, as had already been established by the Working Group, was adoption of a "uniform and clear definition of the concept of substantial transformation". Realization of this goal, as indicated in the secretariat report (document TD/B/C.5/130, para. 83), had been facilitated by the universal application of the Harmonized System of nomenclature by all preference-giving countries. The preference-giving countries concerned could consider the wider use of process criteria and, in due course, standardization of the rules of origin.

9. Pending progress in this direction, a wide range of possible improvements, as described in secretariat document TD/B/C.5/120, could secure better harmonization, simplification and liberalization. The secretariat document also proposed initiatives giving recent information about difficulties encountered by preference-receiving countries along with comments and suggestions on courses of action. A proposal was made to accord priority to those initiatives likely to encounter the least difficulty regarding implementation by preference-giving countries. The Group of 77 wished to recall that at the last meeting of the Sessional Committee it had expressed support for the new approach suggested by the secretariat but, in response to a suggestion by some preference-giving countries, had agreed to defer substantive discussion to the present Committee session.

10. The Group of 77 saw no reason to re-open debate on the grounds for making improvements to the rules. The elements were clearly defined in the secretariat document, i.e. in respect of harmonization, especially the

percentage criterion (excepting that which was applied by the preference-giving court ie of Eastern Europe), extension of the concept of donor country content, general application of the full and global cumulation provision, liberalization of the percentage and process criteria (including the 5 per cent rate applied under various headings of chapters 84-91 of the Harmonized System) and simplification (including that of documentation). As concerns documentation, attention should be drawn to the experience (see document TD/B/C.5/126) of temporary relaxation granted by preference-giving countries using the process criterion at the time the HS system was introduced. The question still remained open of special arrangements for the least developed countries where the restrictions and complexities of the rules of origin presented particular difficulties.

11. With the co-operation of the preference-giving countries, the Group of 77 wished to examine each of the possible initiatives as proposed in document TD/B/C.5/120 in such a way as to identify (a) first those deemed capable of implementation in the near future; (b) then those which presented greater difficulties for implementation; (c) and finally the remainder to be set aside for further consideration at a later date.

12. The representative of China stated that resolution 159(VI) should be used by the preference-giving countries as guidance for improving, harmonizing and simplifying the rules of origin. While some progress had been made, the existing rules of origin were confused, divergent and excessively restrictive and thus impeded the effective utilization of the GSP. Various additional rules of origin still existed, thus preventing some products from benefiting from the GSP.

13. He noted that, following the introduction of the Harmonized Commodity Description and Coding System, some improvements had been made. The previous lists A and B had been merged into a single list, and the original four columns had been reduced to three. Nevertheless, the introduction of the HS system had not produced any relaxation of origin criteria. The percentage criterion still existed, which prevented some industrial products from enjoying GSP treatment. The representative hoped that the process criterion would be gradually replaced by the percentage criterion which should in all cases provide for an import content not exceeding 50 per cent of the FOB export value.

14. The application of the preference-giving country content rule would contribute to the export expansion of preference-receiving countries, including trade between them and with developed countries. It would also promote foreign investment by the preference-giving countries. The full and global cumulation rule should promote the export expansion of the developing countries and the enhancement of economic co-operation. Moreover, it should be applied generally and as soon as possible.

15. The spokesman for Group B (Japan) said that only products originating in preference-receiving countries should receive preferential tariff treatment. He welcomed the initiatives suggested by the secretariat (in document TD/B/C.5/120) as providing a good basis for further discussions. He agreed that a new approach was needed to guide the Committee in the selection of areas for consideration. An in-depth analysis by the secretariat would help in identifying feasible measures. Group B was prepared to consider all possibilities for improving the rules of origin in areas of interest to preference-receiving countries.

16. The spokesman for the European Economic Community said that while secretariat document TD/B/C.5/120 provided a good basis for discussion, the EEC was in the process of reviewing the rules of origin in its GSP scheme and could not predict the outcome as yet. As the review was taking into account the proposals set out in the secretariat document, however, an indication of the EEC position on some questions could be given.

17. The transitional arrangements connected with the introduction of HS-based origin rules concerning the completion of Box 8 had ceased to apply as from 1 January 1990, in company with Japan. Since then the four-digit HS heading of the exported product had to be inserted in Form A for sufficiently processed products. With reference to document TD/B/C.5/120, as regards the item concerning the procedure for handling requests for changes in particular origin rules, it was noted that the procedure had proved satisfactory and was expected to be continued. As for full and global cumulation, although the Community's views had not changed, the subject remained under consideration; serious administrative problems were foreseen in the operation of such arrangements. The Community had improved the regional cumulation system for ASEAN countries, the only group which had, as yet, completed the necessary formalities so as to benefit from the new system. EEC was also considering in the context of its review of the GSP origin rules, the introduction of donor country content and further liberalization of individual rules of origin.

Action by the Sessional Committee

18. At the Sessional Committee's 2nd meeting, the Chairman introduced draft agreed conclusions (TD/B/C.5(XVII)/SC/L.1).

19. At its 3rd meeting, the Sessional Committee adopted the agreed conclusions, as amended, and authorized the Chairman to recommend the agreed conclusions to the Special Committee on Preferences for adoption.

20. The spokesman for the European Economic Community noted that, with regard to terminology in paragraph 3 of the draft agreed conclusions, the Community would understand "substantial transformation" to be "sufficient working and processing".

21. The representative of China expressed the hope that the rules of origin would be further liberalized on the basis of these conclusions.

22. The Sessional Committee adopted its report with some amendments, on the basis of a draft prepared by the secretariat (TD/B/C.5(XVII)/SC/L.2) and authorized the Rapporteur to complete the report as appropriate.

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